HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No. 21810 of 2003

Date:7-11-2007

Between:

M/s.Durga Cement Works
(A unit of M/s.Andhra Cements Limited)
(A Company incorporated under the Companies Act, 1932
Having its Registered Office at Dachepalli,
Guntur District,
Represented by its Vice President
(Commercial & Legal) Rajagopalan

……Petitioner

and

Employees Provident Fund Organization
Sub Divisional Office, Padmavathi Building,
Lakshmi Puram, Guntur District.
Represented by its Regional Provident Commissioner and others

……..Respondents.

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WRIT PETITION No. 21810 of 2003

ORDER:

The petitioner herein is a company incorporated under the Companies Act, 1932 engaged in manufacturing and sale of cement. It is not in dispute that the petitioner company is covered under the Employees Provident Fund and Miscellaneous Act, 1952 (for short, 'the EPF Act') with effect from 1.10.1987.

While so, by order dated 2.7.1991, the 1st respondent-Regional Provident Fund Commissioner made an order under Section 7 A of the EPF Act determining the monies due from the petitioner towards EPF contributions for the period from October 1987 to February 1991. Aggrieved by the same, the petitioner filed W.P.No.8872 of 1991 contending *inter alia* that the action of the respondent in covering the contract employees with retrospective effect from October 1987, is arbitrary and illegal.

This Court allowed the said writ petition thereby

setting aside the order dated 2.7.1991 and remanding the matter to the Regional Provident Fund Commissioner for fresh consideration, after giving a reasonable opportunity to the petitioner. Thereafter, the petitioner submitted its explanation stating that its liability would be worked out at Rs.7,62,414=80 ps as against the claim of Rs.19,10,286=15 ps made by the 1st respondent. However, the 1st respondent by order dated 17.10.1994 while rejecting the claim of the petitioner reiterated that the petitioner is liable to pay Rs.19,10,286=15. Questioning the same, the petitioner filed W.P.No.5551 of 1995 contending that the impugned proceedings were in contravention of the provisions of Section 22 (i) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'the SICA'). This Court, by order dated 26.11.1998, allowed the writ petition and set aside the proceedings dated 17.10.1994, however it was left open to the respondent to proceed against the petitioner company, after obtaining the requisite consent from the B.I.F.R. Thereafter, the petitioner paid the admitted amounts of Rs.7,62.414=80 ps and the same was accepted by the 1st respondent.

While the matter stood thus, the 2nd respondent-Recovery Officer issued a prohibitory order dated 16.9.2003 restraining the State Bank of India, Gurajala from making any payment from the petitioner's account on

the ground that the petitioner failed to pay the arrears to the tune of Rs.11,49,625=35 ps due under the certificate dated 2.5.1995.

Aggrieved by the same, this writ petition is filed seeking a declaration that the action of the respondents in making the impugned demand including the prohibitory order dated 16.9.2003, as arbitrary and illegal.

In the counter affidavit filed on behalf of the respondents 1 and 2, while stating that pursuant to the order of this Court in W.P.No.5551 of 1995, the respondents made a representation before the B.I.F.R for its consent, the impugned prohibitory order is sought to be justified on the basis of the decision of this Court in **SARVARAYA TEXTILES LIMITED AND COMMISSIONER, EMPLOYEES' PROVIDENT FUND AND OTHERS**[1]**.**

I have heard the learned Counsel for both the parties.

Section 22 of the SICA provides for suspension of legal proceedings, contracts, etc., in respect of the cases mentioned therein.

The question whether recovery proceedings under the EPF Act are liable to be stayed under Section 22 (1) of SICA fell for consideration by a Division Bench of this Court in **SARVARYA TEXTILES LTD'S** case (1 supra). After considering the scope and object of the provisions under the SICA as well as the EPF Act, the Division

Bench held that the contributions of the employees towards provident fund would not come within the purview of Section 22 (1) of the SICA. While extensively referring to the decided cases of the Supreme Court both under SICA and EPF Act, the Division Bench held as under:

> "We, are, therefore, of the opinion that the provisions of Section 22 (1) of the SICA have no application to provident fund scheme framed under the provisions of the EPF Act and the dues under the EPF Act do not fall within the purview of Section 22 (1) of the SICA. The respondents are, therefore, entitled to take recourse to coercive steps for recovery of the dues towards the employees' share of contribution."

Admittedly, in the case on hand, the impugned prohibitory order dated 16-9-2003 was issued for recovery of the provident fund dues which included the employees share of contribution.

It is true that this Court in W.P.No.5551 of 1995 held that the respondents cannot proceed against the petitioner company for recovery of the PF dues without obtaining the requisite consent from the BIFR. However, in view of the legal position as interpreted in a later decision by a Division Bench of this Court in **SARVARAYA TEXTILES LTD's** case (1 supra) it is not open to the petitioner to contend that the consent of BIFR is mandatory.

It is also relevant to note that the liability of the petitioner for the amount assessed by order dated 17-10-1994 under Section 7-A of the EPF Act remained unchallenged by the petitioner. The only contention raised in W.P.No.5551 of 1995 was that the recovery proceedings were in contravention of Section 22 (1) of SICA. This Court having accepted the said plea left it

open to the respondents to proceed against the petitioner after obtaining the requisite consent from the B.I.F.R. Now that a Division Bench of this Court made it clear that such consent is not necessary, the impugned action of the 1st respondent in issuing the prohibitory order cannot be found fault with.

The Writ Petition, which is devoid of merit, is therefore dismissed. No costs.

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(G.ROHINI, J)

Dt:7-11-2007
mrb/gbs

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[1] 2002 (1) LLJ 611